

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 494 of 1991

with

CRIMINAL APPEAL No 416 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? YES
 2. To be referred to the Reporter or not? YES
 3. Whether Their Lordships wish to see the fair copy
of the judgement? NO
 4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge?
NO
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RAVAL MOHANBHAI LAXMANBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 494 of 1991
MR NITIN M AMIN for Petitioner
MR KAMAL MEHTA ASSTT. PUBLIC PROSECUTOR for Respondent No. 1
 2. Criminal AppealNo 416 of 1991
THROUGH JAIL for Petitioner
MR KAMAL MEHTA ASSTT. PUBLIC PROSECUTOR for Respondent No. 1
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CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE J.R.VORA

Date of decision: 05/02/98

ORAL JUDGEMENT

1. The appellant - original accused in Sessions Case No. 8/91 has filed this appeal against the judgement and order dated 31st May 1991 passed by learned Additional Sessions Judge, Mehsana holding the appellant guilty of offence punishable u/s 302 of the Indian Penal Code and sentenced to rigorous imprisonment for life.

2. The facts which led prosecution of the appellant (to be referred to as 'the accused') are as under :-

The accused was residing with his wife and four children, that is two sons, one daughter and one eldest daughter being married was staying at her in-law's house. The accused was doing labour work by employing donkeys. Since before about 10 days of 3rd October 1990, accused had hallucination or illusion to the effect that someone is coming to assault him and remained under constant apprehension of being killed. He was all the time bubbling to this effect. Feeling that he is affected by some ill-spirit, it was arranged to call for some sorcerer to get remove the effect of the ill spirit. That sorcerer was to come in the evening of 3rd October 1990. As sorcerer was to come on that day, brother in-law of accused had also come there. As the master did not turn up on that day, brother in law of accused stayed over night. On that day, accused, his wife and young daughter aged about 6 years, went to bed in their house, while his son and brother in law went to bed outside the house. On the next day when brother in-law and son who were sleeping outside got up in the morning. The accused was informed that his brother in-law is going. Accused replied from the house that he may go. However, as the brother in-law wanted to see him, they knocked the door, however the doors were not opened. As they went on knocking, the villagers gathered and then the door was got opened. As soon as the door was opened, accused came out of the house and scuffled with his brother in-law. However, the brother in-law was released by the brother of the accused, who came there on hearing this hue and cry. When the son and brother of the accused entered the house after the door was opened, they found wife of the accused lying dead in the coat and in the bleeding condition. The brother of the accused therefore informed Sarpanch and Ex - Police Patel of the village, who informed the Taluka Police by phone. On arrival of Circle Police Inspector, complaint was lodged and the offence was registered.

3. On completion of the investigation, the accused was chargesheeted in the Court of learned Judicial Magistrate First Class, Patan, who in turn committed the accused to the Court of Sessions. The matter was transferred to the learned Additional Sessions Judge, who framed charge against the accused u/s 302 of the Indian Penal Code and section 135 of the Bombay Police Act. Accused pleaded not guilty and claimed to be tried. Prosecution led necessary evidence and on completion of the prosecution evidence, further statement of the accused was recorded u/s 313 of the Code of Criminal Procedure, 1973 (for short 'the Code'). From the said statement, it appears that the accused has pleaded ignorance as to the incident and commission of offence. Accused has not led any evidence in defence. Learned Additional Sessions Judge, after hearing the learned Assistant Public Prosecutor and learned Advocate for defence, held accused guilty of the offence u/s 302 of the Indian Penal Code, however acquitted of the offence u/s 135 of the Bombay Police Act. This judgement and order is assailed in this appeal.

4. Learned Advocate Mr. N.M.Amin has challenged the conviction mainly on the ground that the case of the accused falls within the exception as provided in section 84 of the Indian Penal Code and the learned Judge ought to have given benefit of doubt to the accused. Mr.Amin further contended that it was the duty cast on the prosecution to prove that accused was sane at the time when the act which amounts to a criminal offence, is committed. As the prosecution has failed to establish this and when the evidence on record suggests the probability of accused being insane at the relevant time, benefit of doubt ought to have been given. In view of this fact, the judgement and order of the learned Additional Sessions Judge is erroneous.

5. Learned APP Mr. Kamal Mehta contended before the Court that the prosecution has proved beyond reasonable doubt that it is the accused who has committed the murder of deceased, his wife and he was sane at the relevant time. Mr. Mehta relying on section - 84 of the Indian Penal Code contended that it was the burden cast on accused to prove that he was of unsoundness of mind and incapable of knowing the nature of the act or that he was not knowing that what he was doing was either wrong or contrary to law.

6. We appreciate that Mr.Amin has not contended before us that the circumstances on record do not suggest that it is not the accused who has killed his wife. From

record, the fact which emerges is that it was accused in company of his wife was in the house in the night of 3rd and 4th October 1990. When in the morning, the doors were opened at the insistence of brother in-law of the accused, son of the accused and some villagers, what was found was that the wife of the accused was dead in the bed. Thus, only inference which can be drawn was that it is the accused who has committed murder of his wife at night. Clothes of the accused were found blood stained. A wooden stick and an axe were also found from the house itself and they were also stained with blood. Therefore, necessary inference as drawn by the learned Judge that it is the accused who has committed the murder of his wife cannot be disputed and he has not seriously challenged the same.

7. What Mr.Amin has challenged is that the act committed by the accused was neither committed by reason of soundness of mind nor accused was capable of knowing the nature of act or that he was knowing what he is doing is either wrong or contrary to law. Mr. Amin contended that the prosecution evidence itself suggest that the accused was a person of unsound mind at the relevant time when he committed the act. Mr.Amin contended that it is not necessary to lead necessary evidence to establish this fact, particularly when the prosecution evidence itself so suggests. The question therefore is whether the evidence on record suggests that accused was incapable of understanding what he was doing, meaning thereby, he was of an unsound mind?

8. Legal position by catena of cases as to the burden of proof to claim exception is now a settled one. In case of Dahyabhai Chhaganbhai Thakkar vs. State of Gujarat (AIR 1964 SC 1563), the Court has held;

"The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions : (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea; and the burden of proving that always rests on the prosecution from the beginning to the end of the trial, (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by section 84 of the Indian Penal Code, the accused may rebut it by placing before the court all the relevant evidence - oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon

a party to civil proceedings, (3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case, the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged."

This judgement is also followed by Karnataka High Court in the case of Sanna Eranna (Accused) v/s State of Karnataka (1983 Cri.L.J. 619) and by Kerala High Court also in case of Kuttappan vs. State of Kerala (1986 Cr.L.J. 271).

9. Keeping in mind the doctrine of burden of proof, it is required to be considered whether the same has been discharged by the accused in the instant case or not. From the record, it appears that the accused was arrested at 20.00 hrs. on 4th October 1990 and was presented before the learned Magistrate on 5th October 1990. On that very day, an application was filed by the Police Inspector, who arrested the accused, before the learned Judicial Magistrate First Class, Patan to the effect that in the course of investigation and from FIR, it is revealed that the said accused suffers from hallucinations since long and his mental condition appears to be unsound and prima facie it appears that he has committed this act in such mental condition. It was therefore prayed that necessary action be taken for verifying his mental condition. The learned Magistrate therefore ordered to refer him to Superintendent, General Hospital, Patan with a direction to examine him and opined as to his mental condition and of physical state of health and certify accordingly. In response to the same, Superintendent, General Hospital, Patan has opined on 11th October 1990 that, on examination, the accused Shri Mohanbhai Laxmanbhai Raval is found healthy, physical and mentally. This certificate in our opinion is used by the learned Additional Sessions Judge. In our opinion, the same is used for the purpose of satisfying the requirements of section 328 of the Code, because it refers to mental and physical condition at the time of trial. The accused was not referred to the doctor for an opinion as to whether at the relevant time prior thereto, he was in a fit state of mental condition.

10. Section 329 of the Code provides for procedure for prosecuting the accused persons lunatics :-

"Section - 329 :

(1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Magistrate or Court.

11. If at the time of trial, if accused is found to be lunatic, then the trial is required to be postponed. It appears that the learned Additional Sessions Judge found accused not a lunatic person at the relevant time of the trial and the trial has proceeded with. Therefore, that certificate which is on record will not assist the prosecution to establish that accused was in a fit state of mind at the time when he committed the act which amounted to an offence.

12. In view of the principle laid down in the case of Dahyabhai (supra), it is now to be considered whether defence has been able to show that the accused was not in fit state of mind at the relevant time when the alleged act is committed. Mr. Amin, learned Advocate took us through the evidence of PW-4 son of the accused, PW-2 brother of the accused and PW-3 brother in-law of accused. PW-4 is a minor aged about 16 years. However, the learned Additional Sessions Judge being satisfied that he understands the sanctity of oath, gave him oath and his evidence was recorded. PW-4 has stated that, on the previous day of the incident, he had gone to fetch his maternal uncle (PW-3). His mother had sent him. They came at Ranuj by 10.00 p.m. All the members of the family, my maternal uncle, my elder uncle's son Kanu were all sitting and talking. My elder uncle's son went home. My maternal uncle and I slept in Osari. My mother and my younger sister slept in a room. My maternal uncle

awakened me in the morning, as he had to go. I knocked to get my house opened. My father told my maternal uncle that, if he wants to go, he may go. All gathered and the door was opened by my father and on so opening of the door, he caught hold of my maternal uncle. My elder uncle intervened and got them separated. My elder uncle took my father to his house. When I entered the house, I saw that my mother was lying dead in a coat and was in a bleeding condition. My maternal uncle then left for Dharmmada. In the cross examination, witness has admitted that mental condition of my father had deteriorated since 8 to 10 days. He was not therefore going for work. He was going out of the house repeatedly. He had gone to my maternal uncle's house some four days before the incident. My mother had gone to search my father because mind of my father was not working properly. My mother had called sorcerer. He was called to treat the mental condition of my father. This part of evidence is further supported by PW-2. However, defence is able to prove by proving omission that his brother in-law was moving since about a week and it appears as if he has some effect of some goddess and also it appeared that his mental condition was like that of a mad man. He had also come to village Ranuj. His sister has also followed him as his mind was not working properly. His mother has left him at Ranuj. At that time also, his mental condition was not proper.

13. Thus, from the evidence of this PW-2, 3 and 4, it is clear that since about 10 days before the incident, mental condition of accused was not proper. As his mental condition was not proper, they being rustic villagers carried on impression that he is suffering from effect of some ill spirit. On the night of incident, they had called sorcere to treat him of the effect of that ill spirit. However, the sorcere did not turn up on that night and unfortunately, the incident took place. These facts in our opinion clearly suggest that there was something wrong with the mental condition of the accused. Accused had effect on his mind since about 10 days of the incident and was required or intended to be treated instead of by any Psychiatric or a Doctor, by a sorcere. The question is whether this part of evidence discharges the burden to bring the case of the accused within section 84 of the Indian Penal Code. as referred earlier in the case of Dahyabhai (supra) that even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the Court by the accused or by the prosecution, may raise reasonable doubt in the mind of the Court as regards the one or more of the ingredients of the offence

including the mental condition of the accused. It may be relevant to refer in the facts and circumstances of the case that, immediately after the door was got opened by brother of the accused, the accused has not made any attempt to run away. On the contrary, the accused had scuffled with PW-3 and because of the intervention of PW-2, he was got released. There is nothing on record even by way of suggestion by the prosecution that anything had gone wrong on the earlier day or earlier few days which may either have given a cause or provocation to the accused to kill his wife. On the contrary, it appears or it can safely be inferred from the evidence on record that their relationship were cordial. Deceased wife of the accused was taking due care of the accused. When accused went to her parent's house, she also went in search for him and brought him back. She has arranged to call sorcerer to see that accused comes out from the effect of ill-spirits. Even after opening the door in the morning, no attempt is made by the accused to run away nor he uttered anything which may suggest that he had knowledge of what he has done at night. Learned APP Mr. Mehta contended before us that, in section 313 statement, he has not come out with the case of his inability to understand what he has done on that night. However, answers to all the questions in our opinion are suggestive that he is not knowing as to what has been done. Thus, conduct of the accused prior to the incident, conduct of the accused at the time of commission of offence and conduct of the accused subsequent to the incident, leads to infer that accused was not in a fit state of mind. Mr. Mehta, learned APP contended that accused was in fit state of mind and that could be inferred from the fact that, on the fateful night, the accused had got up after mid night, had come out of the house and had gone to answer the call of nature. True, as it is. But other surrounding circumstances if also looked into, it confirms with our view that he was not in fit state of mind. The other circumstances are that the accused came out of the house he stood near the coat of PW-3 his brother in-law. If he had come out from the house to answer call of nature, there was no reason for him to stand near the coat of PW-3 as normally he would be in a hurry to go. Not only that, wife of accused i.e. deceased also came out from the house following him and on enquiring from the accused as to why he was standing near the coat of PW-2, accused answered that he wants to go to answer the call of nature. She then accompanied him when he went to answer the call of nature. Normally, in villages, persons go out of their houses to answer the call of nature. But it is only the women who go in the company of others and not

the males. There was no reason for deceased wife of the accused to accompany him when accused went to answer call of nature if there was nothing wrong. This fact by itself suggest that there was something wrong with the health of the accused and that may be as to mental condition as suggested. Earlier instances are there on record to show that accused has gone away to inform the family members of deceased and the accused was searched and found from his in-law's house when deceased wife had gone to search for him. All these facts cumulatively suggests that the accused was not in fit state of mind at the time when he committed the act which amounted to an offence. Section 84 shows that the act is not an offence, if it is done by a person who at the time of doing it by reason of unsoundness of mind, is incapable of knowing the nature of the act or he is knowing what is the wrong or contrary to law. It is not necessary that there should be a medical certificate to show unsoundness of mind. Circumstances in the present case spells out that the accused was of unsound mind at the relevant time and therefore, the case of the accused squarely falls within the purview of section 84 of the Indian Penal Code.

12. In view of above discussion, as the case of the accused falls within the purview of section 84 of the Penal Code, the accused is entitled to benefit of doubt. The appeal is therefore allowed. The order of conviction and sentence is set aside. Though we are acquitting the accused, he need not be discharged at this stage from the custody. For his own security and that of others, we propose that the accused should be continued in jail until Government gets him examined by the medical authorities of the State and till he is found by them sufficiently fit to be released from jail custody. We direct the office to report this order to the Government u/s 335 and 336 of the Code within two weeks.

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